

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

STEVEN A. AUGUSTINO

DIRECT LINE: (202) 342-8612

EMAIL: saugustino@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
CHICAGO, IL
PARSIPPANY, NJ
STAMFORD, CT
BRUSSELS, BELGIUM
AFFILIATE OFFICE
MUMBAI, INDIA

November 16, 2018

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation, XO Communications Services, LLC
CC Docket Nos. 96-45 and 97-21; WC Docket No. 06-122
XO Application for Review of Decision of the
Wireline Competition Bureau

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the undersigned counsel hereby provides notice that on November 13, 2018, XO Communications Services, LLC ("XOCS")¹ met with Ryan Palmer, Karen Sprung and Claudia Fox (by telephone), all with the Telecommunications and Access Policy Division of the Wireline Competition Bureau. XOCS was represented at the meeting by its counsel, Steven A. Augustino of Kelley Drye & Warren LLP.

In the meeting, XOCS discussed its pending Application for Review of the Bureau's March 30, 2017 *Private Line Order*.² We also discussed the status of USAC's inquiry to XOCS in response to the *Private Line Order*.

¹ After the initial appeal was filed in 2010, XOCS converted its corporate form to a limited liability company ("LLC"). In 2017, Verizon Communications, Inc. acquired the fiber-optic network business of XO Communications, including XOCS. XOCS is now a subsidiary of Verizon Communications.

² *In the Matter of XO Communications Services, Inc., Request for Review of Decision of the Universal Service Administrator et al.*, CC Docket Nos. 96-45, 97-21, WC Docket

Ms. Marlene H. Dortch
November 16, 2018
Page 2

XOCS stated that the *Private Line Order* led to unfair burdens on XOCS to produce additional information to USAC regarding its 2007 private line service revenues after such a long delay. XOCS expressed the opinion that the *Private Line Order* appeared to contemplate circuit-specific evidence and types of evidence of jurisdiction that were not reasonably anticipated at the time the services were rendered. In addition, such evidence was not feasible to collect during the USAC audit (which in XOCS' case occurred from 2008 to 2010), and it definitely is not possible to collect more than a decade after the services were rendered. To the extent that this evidence would be required of XOCS retroactively, the *Private Line Order* would cause substantial harm to XOCS. Accordingly, as XOCS contended in its Application for Review, the *Private Line Order* should be applied prospectively, to services provided on or after the date of the order.

Further, XOCS explained that the above harms could be avoided if the Commission reverses the *Private Line Order's* interpretation of the FCC's orders regarding the jurisdictional allocation of mixed-use private lines. XOCS explained that the Bureau's interpretation was inconsistent with the history and the goals of the Separations Orders, as explained in the Application for Review. XOCS further argued that the six appeals addressed in the *Private Line Order* and the number of USAC audits that continue to contain private line findings shows a widespread industry interpretation of the 10% rule that is contrary to the Bureau's finding. XOCS argued that, as noted in its 2010 appeal, Commission statements in 1995, 1998 and 2001 contributed to the industry's understanding of the operation of the private line rule. XOCS contended that the *Private Line Order* should be corrected by the Commission in response to the Application for Review.

Finally, XOCS asked that the Commission issue a decision on the Application for Review as soon as possible. USAC requested additional information from XOCS in October, 2017, and XOCS last responded with information in March, 2018. XOCS stated that the Commission should issue its decision before USAC acts on remand.

No. 06-122, Order, 32 FCC Rcd 2140 (WCB 2017) ("Private Line Order"); *see XO Communications Services, LLC Application for Review of Decision of the Wireline Competition Bureau*, WC Docket Nos. 96-45, 97-21 and 06-122, filed May 1, 2017 ("Application for Review").

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch
November 16, 2018
Page 3

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically in the dockets identified above.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is fluid and cursive, with a large initial "S" and "A".

Steven A. Augustino

Counsel to XO Communications Services, LLC

SAA:pab

cc: Ryan Palmer
Karen Sprung
Claudia Fox